

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

JOSEPH GIBBS,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No. 98-787 JJF
	:	
CAROLYN HARTSKY, Detective	:	
Wilmington Police Department	:	
Delaware, THE CITY OF WILMINGTON	:	
DELAWARE EMPLOYEES,	:	
	:	
Defendants.	:	

Darryl K. Fountain, Esquire of LAW OFFICE OF DARRYL K. FOUNTAIN,
Wilmington, Delaware.
Attorney for Plaintiff.

Rosamaria Tassone, Esquire of CITY OF WILMINGTON LAW DEPARTMENT,
Wilmington, Delaware.
Attorney for Defendants.

MEMORANDUM OPINION

March 31, 2004

Wilmington, Delaware

Farnan, District Judge.

Presently before the Court is Defendants Carolyn Hartsky's, Detective Wilmington Police Department Delaware ("Detective Hartsky") And The City Of Wilmington Delaware Employees' (the "City of Wilmington") Motion For Summary Judgment. (D.I. 63.) For the reasons set forth below, the Court will grant the Motion.

BACKGROUND

The instant lawsuit arises from Detective Hartsky's investigation and arrest of Plaintiff for unlawful sexual intercourse in the first degree, in violation of 11 Del. C. § 755 (repealed 1998). Following a report of Plaintiff's unlawful sexual relations with his daughter, Rashidah Roane, Detective Hartsky began an investigation that resulted in the arrest and indictment of Plaintiff. Following his arrest, Plaintiff remained in custody for nineteen months until the Delaware Deputy Attorney General entered a nolle prosequi due to "insufficiency of evidence necessary for a conviction." (D.I. 65 at A-176.) Plaintiff instituted the instant action pursuant to 42 U.S.C. § 1983 alleging a violation of his Fourth Amendment rights. Plaintiff seeks five billion dollars in compensatory damages and five billion dollars in punitive damages. By their Motion, Detective Hartsky and the City of Wilmington request summary judgment on all of Plaintiff's claims.

STANDARD OF REVIEW

Rule 56(c) of the Federal Rules of Civil Procedure provides that a party is entitled to summary judgment if a court determines from its examination of "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any," that there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). In determining whether there is a triable dispute of material fact, a court must review all of the evidence and construe all inferences in the light most favorable to the non-moving party. Goodman v. Mead Johnson & Co., 534 F.2d 566, 573 (3d Cir. 1976). However, a court should not make credibility determinations or weigh the evidence. Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 150 (2000). Thus, to properly consider all of the evidence without making credibility determinations or weighing the evidence the "court should give credence to the evidence favoring the [non-movant] as well as that 'evidence supporting the moving party that is uncontradicted and unimpeached, at least to the extent that that evidence comes from disinterested witnesses.'" Id. (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 254 (1986)).

To defeat a motion for summary judgment, Rule 56(c) requires the non-moving party to:

do more than simply show that there is some metaphysical doubt as to the material facts. . . . In the language of the Rule, the non-moving party must come forward with "specific facts showing that there is a genuine issue for trial." . . . Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is "no genuine issue for trial."

Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 586-87 (1986) (quoting Fed. R. Civ. P. 56). Accordingly, a mere scintilla of evidence in support of the non-moving party is insufficient for a court to deny summary judgment. Liberty Lobby, Inc., 477 U.S. at 252 (1986).

DISCUSSION

I. Parties' Contentions

Detective Hartsky and the City of Wilmington (collectively the "Defendants") contend that Detective Hartsky had probable cause to arrest Plaintiff. Defendants maintain that the existence of probable cause is a complete defense to Plaintiff's claims. Defendants assert that probable cause existed because of the facts Detective Hartsky discovered during her investigation. Further, Defendants contend that the grand jury's indictment of Plaintiff establishes, as a matter of law, that probable cause existed for Plaintiff's arrest. Defendants also contend that Detective Hartsky is entitled to qualified immunity. Further, Defendants contend that Plaintiff has failed to allege a failure to train claim against the City of Wilmington.

In response, Plaintiff contends that probable cause is an

issue of fact inappropriate for resolution at the summary judgment stage. Plaintiff also asserts that determining the availability of punitive damages cannot be done at the summary judgment stage. In addition, Plaintiff maintains that because Detective Hartsky failed to properly investigate potentially exculpatory leads, she is not entitled to qualified immunity. Further, Plaintiff contends that the City of Wilmington violated his constitutional rights by failing to appropriately train Detective Hartsky.

II. Decision

A. Whether The Court Should Grant Judgment On Plaintiff's Section 1983 Claims

In order for a plaintiff to establish a viable Section 1983 claim, a plaintiff must first demonstrate that his or her injury was caused by a constitutional violation. Collins v. City of Harker Heights, Tex., 503 U.S. 115, 120 (1992). Thus, "[t]he proper inquiry in a [S]ection 1983 claim based on false arrest or misuse of the criminal process is not whether the person arrested in fact committed the offense but whether the arresting officers had probable cause to believe the person arrested had committed the offense." Dowling v. City of Philadelphia, 855 F.2d 136, 141 (3d Cir. 1988) (citations omitted); Orsatti v. New Jersey State Police, 71 F.3d 480, 483 (3d Cir. 1995). Probable cause requires more than mere suspicion; however, it does not require the officer to believe the suspect is guilty beyond a reasonable

doubt. Id. Therefore, probable cause will exist when the facts and circumstances "are sufficient in themselves to warrant a reasonable person to believe that an offense has been or is being committed by the person to be arrested." Id.

1. Decision With Respect To Detective Hartsky

The Court concludes that Detective Hartsky had probable cause to arrest Plaintiff for a suspected violation of 11 Del. C. § 775 (repealed 1998),¹ and therefore, will grant Detective Hartsky summary judgment. Detective Hartsky's investigation of Plaintiff began following a complaint filed by a Delaware Family Services ("DFS") employee. (D.I. 65 at A-69.) The DFS employee reported four instances of unlawful sexual intercourse between Ms. Roane, then fifteen, and Plaintiff. Id. Detective Hartsky interviewed Ms. Roane who confirmed the DFS employee's report. Ms. Roane recalled in detail the circumstances surrounding the alleged sexual assault. Id. at A-5-52. Further investigation by Detective Hartsky revealed that Ms. Roane had given a similar

¹ In relevant part, 11 Del. C. § 775 provides:

a) A person is guilty of unlawful sexual intercourse in the first degree when the person intentionally engages in sexual intercourse with another person and any of the following circumstances exist: . . . (2) The intercourse occurs without the victim's consent and the defendant was not the victim's voluntary social companion on the occasion of the crime and had not permitted the defendant sexual intercourse within the previous 12 months; . . . or (4) The victim is less than 16 years of age and the defendant is not the victim's voluntary social companion on the occasion of the crime.

account of the alleged assault to her social worker, sister, and high school counselor. Id. at A-69-76. Ms. Roane also disclosed to Detective Hartsky that she was pregnant and did not know if the father of her child was her boyfriend or Plaintiff. Id. at A-73. Ms. Roane's high school counselor also informed Detective Hartsky that, following Ms. Roane's report of the alleged unlawful sexual intercourse, her "appearance . . . deteriorated. . . . She [began] sucking her thumb and her appearance has failed." Id. at A-75. Detective Hartsky also interviewed Plaintiff. In this interview, Plaintiff stated that because of the small quarters in which he lived, Ms. Roane and he slept in the same bed. Id. at A-77. Based on this evidence, Detective Hartsky obtained a warrant and arrested Plaintiff. Subsequent to his arrest, a grand jury indicted Plaintiff on six counts of unlawful sexual intercourse first degree, unlawful sexual penetration third degree, and two counts of unlawful sexual contact second degree. Id. at A-163-66.

The Court concludes that the aforementioned evidence relied upon by Detective Hartsky, in determining that there was probable cause to arrest Plaintiff, was "sufficient . . . to warrant a reasonable person to believe that an offense has been or is being committed." Orsatti, 71 F.3d at 483. Ms. Roane's statements to various individuals, her pregnancy, deterioration in appearance, and sleeping arrangement with Plaintiff, when considered as a

whole justified Detective Hartsky's conclusion that she had probable cause to arrest Plaintiff. In addition, relying on this same evidence, the grand jury found probable cause sufficient to justify a nine-count indictment of Plaintiff. The grand jury's finding is particularly relevant to the instant motion because a grand jury indictment, by definition, establishes probable cause. Trabal v. Wells Fargo Armored Serv. Corp., 269 F.3d 243, 251 (3d Cir. 2001); Joy v. Superior Court, 298 A.2d 315, 316 (Del. 1972) ("[An] indictment itself is in effect a finding of probable cause.") (citation omitted).

By contrast, Plaintiff has not come forward with any evidence demonstrating a failure by Detective Hartsky to establish any essential element of 11 Del. C. § 775. As stated above, in a Rule 56 motion a non-moving party may not rest upon mere allegations; instead, a non-moving party must point to specific facts demonstrating that there is a genuine issue for trial. Matsushita, 475 U.S. at 586-87. Plaintiff has failed to do so here. Plaintiff's opposition brief to the instant motion consists entirely of unsupported legal conclusions and conclusory factual allegations. For example, Plaintiff contends that Detective Hartsky chose to "turn a blind-eye and . . . ignore potential exculpatory evidence, such as alibi witnesses for as long as six (6) months." (D.I. 68 at 8.) However, Plaintiff offers no evidentiary support for this or any other assertion.

Therefore, although probable cause is ordinarily a question of fact, in the circumstances of this case the Court concludes that Detective Hartsky is entitled to summary judgment because the evidence, even when construing all inferences in a light most favorable to Plaintiff, does not support a finding that Detective Hartsky lacked probable cause to arrest Plaintiff.² Sharrar v. Felsing, 128 F.3d 810, 818 (3d Cir. 1997).

In addition, the Court's conclusion that Detective Hartsky had probable cause to arrest Plaintiff bars Plaintiff's civil conspiracy claim. Section 1983 is a vehicle by which an individual may seek redress for violations of their constitutional rights. Therefore, without an underlying constitutional injury, a plaintiff cannot succeed on a civil conspiracy claim pursuant to Section 1983. See Thompson v. City of Lawrence, Kan., 58 F.3d 1511, 1517 (10th Cir. 1995) (noting that to succeed on a Section 1983 civil conspiracy claim, a

² The only evidence pointing against a finding of probable cause are the statements of Ms. Colton, an employee of Family and Children Services. Ms. Colton stated that Ms. Roane had on two separate occasions denied that Plaintiff inappropriately touched her. (D.I. 65 at A-75.) The second denial followed Ms. Roane's reports of Plaintiff's alleged unlawful intercourse. Id. However, these statements do not establish that Detective Hartsky arrested Plaintiff without probable cause. As noted above, probable cause does not require the officer to believe the suspect is guilty beyond a reasonable doubt. Orsatti, 71 F.3d at 483 (3d Cir. 1995). In view of the evidence supporting Ms. Roane's allegations, the Court concludes that Detective Hartsky had probable cause to arrest Plaintiff despite Ms. Colton's reports.

plaintiff "must prove both the existence of a conspiracy and the deprivation of a constitutional right."); Singer v. Fulton County Sheriff, 63 F.3d 110, 119 (2d Cir. 1995); Brennan v. Hendrigan, 888 F.2d 189, 195 (1st Cir. 1989); Green v. City of Paterson, 971 F.Supp. 891, 908-09 (D. N.J. 1997). Based upon the Court's conclusion that Detective Hartsky had probable cause to arrest Plaintiff, the Court will also grant Detective Hartsky judgment on Plaintiff's civil conspiracy claim.³

2. Decision With Respect To The City Of Wilmington

A municipality may not be held liable in a Section 1983 action under a respondeat superior theory. Monell v. Dep't of Soc. Servs., 436 U.S. 658, 691 (1978). In order to establish municipal liability under Section 1983 for failure to train, a plaintiff must establish that the municipality had a policy or custom that caused his or her constitutional injury. Id. at 694-95. In this case, the Court has already determined that Plaintiff has not established a constitutional injury resulting from Detective Hartsky's arrest. Therefore, Plaintiff cannot pursue a Section 1983 claim against the City of Wilmington for failure to train Detective Hartsky because there was no violation of his constitutional rights. Accordingly, the Court will also grant the City of Wilmington summary judgment.

³ Based on the foregoing conclusions, the Court will not discuss Detective Hartsky's qualified immunity defense.

CONCLUSION

For the reasons discussed, the Court will grant Detective Hartsky's And The City Of Wilmington's Motion For Summary Judgment. (D.I. 63.) An appropriate Order will be entered.

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FOR THE DISTRICT OF DELAWARE

JOSEPH GIBBS,	:
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v.	: Civil Action No. 98-787 JJF
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CAROLYN HARTSKY, Detective	:
Wilmington Police Department	:
Delaware, THE CITY OF WILMINGTON	:
DELAWARE EMPLOYEES,	:
	:
Defendants.	:

O R D E R

At Wilmington, this 31st day of March, 2004, for the reasons discussed in the Memorandum Opinion issued this date;

IT IS HEREBY ORDERED that Defendants Carolyn Hartsky, Detective Wilmington Police Department Delaware And The City Of Wilmington Delaware Employees' Motion For Summary Judgment (D.I. 63) is **GRANTED**.

JOSEPH J. FARNAN, JR.
UNITED STATES DISTRICT JUDGE

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	:	
Defendants.	:	

JUDGMENT IN A CIVIL CASE

For the reasons stated in the Court's Memorandum Opinion and Order issued on March 31, 2004;

IT IS ORDERED AND ADJUDGED that judgment be and is hereby entered in favor of Defendants Detective Carolyn Hartsky and The City of Wilmington Delaware Employees.

JOSEPH J. FARNAN, JR.
UNITED STATES DISTRICT JUDGE

Dated: March 31, 2004

Anita F. Bolton
(By) Deputy Clerk